IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 895 of 2006

Suresh Vasant Naik and ors. ..Petitioners

vs.

Saroj Sambhaji Kunjir and ors. ..Respondents

Shri P.S.Dani for petitioners.
Shri G.S.Godbole for respaondent nos.1 to 5
Shri R.M.Patne, A.G.P. for respondent State.
Shri Jaydeep Deo for respondent nos. 6 to 23

CORAM: S.C.DHARMADHIKARI J.
22nd NOVEMBER, 2007

P.C.

1. The petitioners' apprehension is that the Additional Commissioner, Pune Division, Pune may not consider their objections to the maintainability of the proceedings before him. They contend that treating the same as review application, he would proceed with the merits and, then, by participating in the proceedings, it would be lateron urged that they are estopped from contending that the proceedings themselves were not maintainable.

2. After this matter was heard for some time, learned Counsel appearing for both sides, do not dispute that the main proceedings are pending. The petitioners have approached this court during

pendency of the said proceedings. The petitioners' apprehension is that the matter is treated as a review whereas the contesting respondents urge that the same is restoration application. Be that as it may, in my view, interest of justice would be subserved if the Additional Commissioner allowes the present petitioners to raise an issue of maintainability of proceedings before him and while deciding the matter also deals with the arguments of both sides on the said issue. Accordingly, the present petition is disposed of by directing the Additional Commissioner to hear the parties on the issue of maintainability of the proceedings as also on merits and pass a reasoned order in accordance with law. The contentions of both sides even on the issue of maintainability are kept open. Petition is disposed of.

(S.C.DHARMADHIKARI J.)